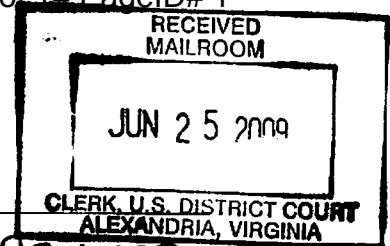


**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA**

Alexandria Division



In re Kenneth Kun Lee

Case No. 09-10780-SSM

Adv. Proceeding No. 1:09CV702
LO/IDD

Debtor(s)

TRANSMITTAL OF RECORD ON APPEAL TO DISTRICT COURT

Pursuant to 28 U.S.C. 158, Notice of Appeal was filed herein on June 4, 2009.

The parties included in the Appeal to the District Court:

APPELLANT(S): Kenneth Kun Lee

ATTORNEY: Daniel M. Press, Esquire (703) 734-3800
6718 Whittier Avenue, Suite 200
McLean, VA 22101

APPELLEE (S): Gordon P. Peyton, Chapter 7 Trustee

ATTORNEY: Gordon P. Peyton (703) 684-2000
510 King Street, Suite 301
Alexandria, VA 22314

Brief Description of Judgment/Order Appealed: Order Sustaining Objection to ExemptionsDate Judgment/Order Entered: June 4, 2009

1. Filing Fees: A. Notice of Appeal - Filing Fee \$5.00 ☒ Paid ☐ Not Paid
B. Appeal Docket Fee - \$250.00 ☒ Paid ☐ Not Paid ☐ Deferred. See attached Request
2. ☒ Notice of Appeal, Order/Judgment, True Copy Teste of Docket Record, and Designation(s) [if any]
3. ☐ No Designation of Record on Appeal filed (See Certification Below)
4. ☐ Copies of items designated by Appellant/Appellee have/have not been submitted pursuant to FRBP 8006 and LBR 8006-1.

Date: June 24, 2009

WILLIAM C. REDDEN, Clerk of the Court
By: /s/ Denise S. Williams, Deputy Clerk

CERTIFICATION TO APPELLATE COURT

It is hereby certified that the designation of record required by Federal Rule of Bankruptcy Procedure 8006 and Local Bankruptcy Rule 8006-1 has not been filed within ten (10) days after the filing of the notice of appeal.

WILLIAM C. REDDEN, Clerk of the Court
By: _____, Deputy Clerk

District Clerk - Please complete and return second copy.

DISTRICT COURT CASE NUMBER 1:09CV702Date 6/26/2009

cc: Attorney for Appellant(s)
Attorney for Appellee(s)

[apptrans ver. 11/01/03]

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

In re)	
)	
KENNETH KUN LEE)	
)	Case No. 09-10780-SSM
Debtor.)	Chapter 7
_____)	

NOTICE OF APPEAL

KENNETH KUN LEE, the Debtor herein, hereby appeals under 28 U.S.C. § 158(a) from the order of U.S. Bankruptcy Judge Stephen S. Mitchell sustaining the Trustee's objection to the Debtor's claim of exemptions entered in this case on the 4th day of June, 2009.

The names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their respective attorneys are as follows:

Kenneth Kun Lee, Debtor:	Daniel M. Press, VSB 37123 Russell B. Adams III, VSB# 37302 CHUNG & PRESS, P.C. 6718 Whittier Avenue, Suite 200 McLean, Virginia 22101 (703) 734-3800
--------------------------	--

Gordon P. Peyton, Trustee:	Gordon P. Peyton, Esq. 510 King Street, Suite 301 Alexandria, VA 22314 (703) 684-2000
----------------------------	--

Daniel M. Press, VSB 37123
Russell B. Adams III, VSB# 37302
Chung & Press, P.C.
6718 Whittier Ave., Suite 200
McLean, Virginia 22101
(703) 734-3800
Counsel for Debtor

Dated: June 4, 2009.

Respectfully submitted,

/s/Daniel M. Press

Daniel M. Press, VSB 37123
Russell B. Adams III, VSB# 37302
CHUNG & PRESS, P.C.
6718 Whittier Avenue, Suite 200
McLean, Virginia 22101
(703) 734-3800

CERTIFICATE OF SERVICE

This is to certify that on this 4th day of June, 2009, I caused the foregoing Notice of Appeal to be served by CM/ECF upon the Chapter 7 Trustee and the Office of the U.S. Trustee

/s/Daniel M. Press

Daniel M. Press

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

In re:)	
)	
KENNETH KUN LEE)	Case No. 09-10780-SSM
)	Chapter 7
Debtor)	

ORDER SUSTAINING OBJECTION TO EXEMPTIONS

A hearing (having been previously continued) was held on June 2, 2009, on the objection of Gordon P. Peyton, chapter 7 trustee, to the debtor's claimed exemptions under § 34-4, Code of Virginia, to the extent they exceed the nominal \$1.00 amounts claimed in the recorded homestead deed. The trustee was present in person and represented himself. The debtor was present by counsel. For the reasons stated, the objection will be sustained.

Kennth Kun Lee ("the debtor") filed a voluntary petition in this court on February 3, 2009, for relief under chapter 7 of the Bankruptcy Code. Gordon P. Peyton was appointed and is acting as trustee. On his schedule of property claimed exempt (Schedule C), the debtor claimed \$6,000.00 in property exempt under the Virginia homestead exemption, § 34-4, Code of Virginia. This consisted of \$1,000 of cash on hand, \$4,999 in a bank account, and \$1 for a 77% interest in a business (apparently defunct) called Van Gogh Imaging. The meeting of creditors was held on March 12, 2009. The debtor filed a timely homestead deed listing those three items, but only in the amount of \$1 each. This objection followed.

Under § 522(b), Bankruptcy Code, an individual debtor may exempt from property of the bankruptcy estate — and thus retain, free from the claims of most creditors — either the

property specified in § 522(d), Bankruptcy Code ("the Federal exemptions"), or, alternatively, the exemptions allowable under state law and general (i.e., nonbankruptcy) Federal law. A state, however, is permitted to "opt out" of allowing its residents to take advantage of the Federal exemptions. § 522(b)(2), Bankruptcy Code. Virginia has done precisely that. Va. Code Ann. § 34-3.1. Accordingly, residents of Virginia filing bankruptcy petitions may claim only those exemptions allowable under state law and general Federal law. *In re Smith*, 45 B.R. 100 (Bankr. E.D. Va. 1984).

The state law exemptions available to Virginia residents include the "homestead" exemption created by § 34-4, Code of Virginia. Under the homestead exemption, a "householder" — defined as any resident of Virginia — may hold up to \$5,000 of real or personal property exempt by filing for record an instrument known as a homestead deed in the clerk's office of the Circuit Court for the city or county where the real property is located and, if personal property is claimed, where the debtor resides. Va. Code Ann. §§ 34-4, 34-6, 34-13, and 34-14. Additional amounts may be claimed exempt if the householder supports dependents or is a disabled veteran. Va. Code Ann. §§ 34-4 (additional \$500 for each dependent) and 34-4.1 (additional \$2,000 for disabled veteran). In the case of a debtor who has filed for bankruptcy, the homestead exemption must be "set apart" no later than 5 days after the meeting of creditors is held. Va. Code Ann. § 34-17. Failure to strictly comply with the requirements of setting apart a homestead exemption results in the loss of that exemption in bankruptcy. *Zimmerman v. Morgan (In re Morgan)*, 689 F.2d 471, 472 (4th Cir. 1982); *In re Freedlander*, 93 B.R. 446, 448-49 (Bankr. E.D. Va. 1988)

There is a long-standing and well-recognized practice in Virginia of initially claiming only a \$1 nominal value in assets under the homestead exemption and of amending the value upward to the unused amount of the homestead exemption after determining which assets the trustee was most likely to administer. See *In re Grablowsky*, 149 B.R. 402, 405 n.4 (Bankr.E.D.Va. 1993), *aff'd sub. nom. Addison v. Reavis*, 158 B.R. 53 (E.D.Va. 1993), *aff'd In re Grablowsky*, 32 F.3d 562 (4th Cir.1994); *In re Sherman*, 191 B.R. 654 (Bankr.E.D.Va.1995). In *Addison*, the District Court, noting the practice, affirmed the bankruptcy court's holding that the debtor's \$1 exemption in each of two limited partnerships exempted only that value, not the entire interest. It is true that *Addison* differs from the present case in that the \$1 valuation was listed not only on the homestead deed, but also on the schedules; however, the court does not find that difference to be significant.

The court has considered the debtor's argument that amendments to § 34-17, Code of Virginia — which, at the time *Morgan* was decided by the Fourth Circuit, required the homestead deed to be filed *prior* to the filing of the bankruptcy petition — have undercut the reasoning of that decision. The court cannot concur. This court has, indeed, held that *substantive* limitations of the Virginia homestead exemption do not apply in bankruptcy to the extent they conflict with the Bankruptcy Code. *In re Scott*, 199 B.R. 586, 591-95 (Bankr. E.D. Va. 1996) (holding that debtor could claim homestead exemption even though Virginia statute did not allow exemption to be asserted against claim for intentional tort). Even that decision, however, recognized that “to the extent not inconsistent with the Bankruptcy Code, the state may specify the *procedure* for claiming such exemptions.” *Scott*, 199 B.R. at 593 (emphasis added). As noted at oral argument, the continuing vitality of *Morgan* was assumed by the Fourth Circuit

in deciding *In re Nguyen*, 211 F.3d 105 (4th Cir. 2000), which held that the homestead exemption is "set aside" for the purpose of § 34-17, Code of Virginia, when a homestead deed in proper form is delivered to the clerk with the proper fee for recording. Obviously, had there been no need to file a homestead deed at all — which is what the debtor here contends — the whole issue of receipt versus recording would have been moot. This court believes, in short, that *Morgan* remains the law in this Circuit and that its vitality has not been undercut either by the amendments to § 34-17 of the Code of Virginia or by the Supreme Court's decision in *Owen v. Owen*, 500 U.S. 305, 111 S.Ct.1833, 114 L.Ed.2d 350 (1991) (holding judicial lien could be avoided under Sec. 522(f) as impairing exemption even though state law defined exemptions as excluding property encumbered by judicial liens). It is, accordingly,

ORDERED:

1. The objection is sustained, and the debtor's claimed exemptions under § 34-4, Code of Virginia, are allowed only in the amount of \$1.00 each for the cash on hand, the bank account, and the interest in Van Gogh Imaging and are disallowed as to the remaining amount claimed on Schedule C, subject to the debtor's right to amend his homestead deed to increase the claimed exemptions up to the maximum unused amount.

2. The clerk will mail a copy of this order, or give electronic notice of its entry, to the parties listed below.

Date: Jun 4 2009

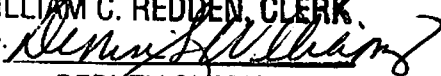
Alexandria, Virginia

/s/ Stephen S. Mitchell

Stephen S. Mitchell
United States Bankruptcy Judge

Entered on Docket: June 4, 2009

4

A TRUE COPY TESTE:
WILLIAM C. REDDEN, CLERK,
BY: 
DEPUTY CLERK

Copies to:

Gordon P. Peyton, Esquire
Redmon, Peyton & Braswell
510 King Street, Suite 301
Alexandria, VA 22314
Chapter 7 trustee

Daniel M. Press, Esquire
Chung & Press, P.C.
6718 Whittier Ave., Suite 200
McLean, VA 22101
Counsel for the debtor

Kenneth Kun Lee
2603 Hannah Farm Ct.
Oakton, VA 22124
Debtor

Assets, Appeal

**U.S. Bankruptcy Court
Eastern District of Virginia (Alexandria)
Bankruptcy Petition #: 09-10780-SSM**

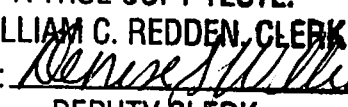
Assigned to: Stephen S. Mitchell
Chapter 7
Voluntary
Asset

Date filed: 02/03/2009
Debtor discharged: 06/09/2009

Debtor disposition: Standard Discharge

Debtor
Kenneth Kun Lee
2603 Hannah Farm Ct.
Oakton, VA 22124
SSN / ITIN: xxx-xx-7349

represented by **Daniel M. Press**
Chung & Press, P.C.
6718 Whittier Ave., Suite 200
McLean, VA 22101
(703) 734-3800
Fax : (703) 734-0590
Email: dpress@chung-
press.com

A TRUE COPY TESTE:
WILLIAM C. REDDEN, CLERK
BY: 
DEPUTY CLERK

Russell B. Adams, III
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Fax : (703)734-0590
Email: radams@chung-
press.com

Trustee
Gordon P. Peyton
Redmon. Peyton & Braswell
510 King Street, Suite 301
Alexandria, VA 22314
(703) 684-2000

represented by **Gordon P. Peyton**
Redmon. Peyton & Braswell
510 King Street, Suite 301
Alexandria, VA 22314
(703) 684-2000
Email: gppeyton@rpb-
law.com

Filing Date	#	Docket Text
02/03/2009	1	Voluntary Petition under Chapter 7 filed by Russell B. Adams III of Chung & Press on behalf of Kenneth Kun Lee (Adams, Russell)

02/03/2009	2	Certificate of Credit Counseling filed by Russell B. Adams III of Chung & Press on behalf of Kenneth Kun Lee (Adams, Russell)
02/03/2009	3	U.S. Treasury receipt of Voluntary Petition under Chapter 7(09-10780) [caseupld,5000] (299.00) filing fee. Receipt number 7717756, amount \$ 299.00. (U.S. Treasury)
02/04/2009	4	Meeting of Creditors: 03/12/2009, 02:00 PM, Office of the U.S. Trustee, 115 South Union Street, Suite 206, Alexandria, Virginia. Objections to Discharge/Dischargeability due by 05/11/2009. Interim Trustee: Gordon P. Peyton.
02/04/2009	5	LBR 1007-1 Schedule(s) and/or Statement 1007-3 Statement of Intention Deficiency; Incomplete Filings due by 2/18/2009. Statement of Intention due 3/5/2009. (Lauer, Robin)
02/06/2009	6	Notice of LBR 1007-1 Deficiency (Re: related document(s) 5 LBR 1007-1, and/or 1007-3, and/or 3015 Case Filing/Plan Deficiency) (Admin.) (Entered: 02/07/2009)
02/06/2009	7	Notice of LBR 1007-3 Deficiency (Re: related document(s) 5 LBR 1007-1, and/or 1007-3, and/or 3015 Case Filing/Plan Deficiency) (Admin.) (Entered: 02/07/2009)
02/06/2009	8	Notice of Meeting of Creditors (Re: related document(s) 4 Auto Assign Meeting of Creditors Chapter 7 Individual/Joint) (Admin.) (Entered: 02/07/2009)
02/06/2009	9	Order to Debtor(s) (Admin.) (Entered: 02/07/2009)
02/06/2009	10	Notice of Electronic Filing Procedure (Admin.) (Entered: 02/07/2009)
02/06/2009	11	Notice of Requirement to Complete Course in Personal Financial Management and to File Certification. (Admin.) (Entered: 02/07/2009)
02/18/2009	12	Motion to Extend Time to File Lists, Schedules and/or Statements filed by Russell B. Adams III of Chung & Press on behalf of Kenneth Kun Lee. (Adams, Russell)
02/26/2009	13	Order Granting Motion to Extend Time to File Lists Schedules and/or Statements LBR 1007-1 (Related Doc # 12) Incomplete Filings due by 3/5/2009. (Williams, Denise)
		BNC certificate of mailing of order (Re: related document(s) 13 Order on Motion to Extend Time to File Lists Schedules and/or

02/28/2009	14	Statements LBR 1007-1) (Admin.) (Entered: 03/01/2009)
03/05/2009	15	Schedule(s) and/or Statement(s), Lists (Re: related document(s) 5 LBR 1007-1, and/or 1007-3, and/or 3015 Case Filing/Plan Deficiency) filed by Daniel M. Press of Chung & Press, P.C. on behalf of Kenneth Kun Lee. (Press, Daniel)
03/09/2009	16	Amendment Cover Sheet filed by Russell B. Adams III of Chung & Press on behalf of Kenneth Kun Lee. (Attachments: # 1 Cover Sheet for List of Creditors and Amended Creditor List# 2 Notice to Creditors re: Amendment)(Adams, Russell)
03/09/2009	17	Amended Cover Sheet for List of Creditors and List of Creditors filed by Russell B. Adams III of Chung & Press on behalf of Kenneth Kun Lee. (Adams, Russell)
03/10/2009	18	Notice to Cure Filing Fee Deficiency (Re: related document(s) 16 Amendment Cover Sheet filed by Kenneth Kun Lee) Filing Fee Due in the amount of \$26.00 due by 3/11/2009. (Williams, Denise)
03/11/2009	19	Amended Schedule(s) and/or Statement(s) Filed: Schedule F, filed by Russell B. Adams III of Chung & Press on behalf of Kenneth Kun Lee. (Adams, Russell)
03/11/2009	20	U.S. Treasury receipt of Amended Schedule(s) and/or Statement (s), List(s)(09-10780-SSM) [misc,2011amd] (26.00) filing fee. Receipt number 7864700, amount \$ 26.00. (U.S. Treasury)
03/12/2009	21	Notice of Deficient Filing Issued to Russell Adams, Esquire regarding Amended Schedules; Document does not match event entry used for docketing. (Re: related document(s) 19 Amended Schedule(s) and/or Statement(s), List(s) filed by Kenneth Kun Lee) Document(s) due by 3/23/2009. (Williams, Denise)
03/13/2009	22	Trustee Request for Asset Notice. The Clerk will please send a notice to all creditors and parties in interest stating that there may be assets available for distribution and requiring that Proof of Claims be filed in this case. If I have filed a Report of No Distribution, please withdraw it. Filed by Gordon P. Peyton of Redmon. Peyton & Braswell on behalf of Gordon P. Peyton (Peyton, Gordon)
03/16/2009	23	Request for Notice of Need to File Proof of Claim (Re: related document(s) 22 Trustee Request for Asset Notice filed by Gordon P. Peyton) Proof of Claims due by 6/16/2009. Government Proof of Claim due by 8/4/2009. (Williams, Denise)

03/18/2009	24	Notice of Need to File Proof of Claim (Re: related document(s) 23 Request for Notice of Need to File Proof of Claim) (Admin.) (Entered: 03/19/2009)
03/24/2009	25	Notice of Appearance <i>and Request for Service of Notices and Documents</i> filed by Kristen E. Burgers of Venable LLP on behalf of Jeong Kim. (Burgers, Kristen)
04/03/2009	26	Motion for Relief from Stay Re: 2603 Hannah Farm Court, Oakton, VA 22124 (BGW#74845) filed by Stephen B Wood of Bierman, Geesing & Ward, LLC on behalf of JPMorgan Chase Bank, National Association. Hearing scheduled 5/6/2009 at 09:30 AM at Judge Mitchell's Courtroom, 200 South Washington Street, 2nd Floor, Courtroom I, Alexandria, VA. (Attachments: # 1 Exhibit(s) Note# 2 Exhibit(s) Deed of Trust# 3 Exhibit(s) Arrearage Worksheet# 4 Notice of Motion) (Wood, Stephen)
04/03/2009	27	U.S. Treasury receipt of Motion for Relief from Stay(09-10780-SSM) [motion,185] (150.00) filing fee. Receipt number 8946886, amount \$ 150.00. (U.S. Treasury)
04/13/2009	28	Objection to Debtors Claim of Homestead Exemptions Filed by Gordon P. Peyton of Redmon. Peyton & Braswell on behalf of Gordon P. Peyton (Peyton, Gordon)
04/13/2009	29	Notice of Hearing (Re: related document(s) 28 Objection to Debtors Claim of Exemptions filed by Gordon P. Peyton) Filed by Gordon P. Peyton of Redmon. Peyton & Braswell on behalf of Gordon P. Peyton Hearing scheduled 5/5/2009 at 10:00 AM at Judge Mitchell's Courtroom, 200 South Washington Street, 2nd Floor, Courtroom I, Alexandria, VA. (Peyton, Gordon)
04/15/2009	30	Certification of Completion of Postpetition Instructional Course Concerning Personal Financial Management filed by Russell B. Adams III of Chung & Press on behalf of Kenneth Kun Lee. (Adams, Russell)
04/19/2009	31	Response to <i>Motion for Relief from Stay</i> (Re: related document(s) 26 motion Motion for Relief from Stay filed by JPMorgan Chase Bank, National Association) filed by Daniel M. Press of Chung & Press, P.C. on behalf of Kenneth Kun Lee. (Press, Daniel)
05/01/2009	32	Response to <i>Trustee's Objection to Debtor's Claim of Exemptions</i> (Re: related document(s) 28 Objection to Debtors Claim of Exemptions filed by Gordon P. Peyton) filed by Daniel M. Press of Chung & Press, P.C. on behalf of Kenneth Kun Lee. (Press, Daniel)

05/05/2009	33	Hearing continued (Re: related document(s) <u>28</u> Objection to Debtors Claim of Exemptions filed by Gordon P. Peyton) Hearing scheduled 5/19/2009 at 10:00 AM at Judge Mitchell's Courtroom, 200 South Washington Street, 2nd Floor, Courtroom I, Alexandria, VA. (Appearances by: Elizabeth Lynch/Tr) (Lawson, Tawanna) (Entered: 05/06/2009)
05/06/2009	34	Hearing continued (Re: related document(s) <u>26</u> Motion for Relief from Stay filed by JPMorgan Chase Bank, National Association) Hearing scheduled 5/20/2009 at 09:30 AM at Judge Mitchell's Courtroom, 200 South Washington Street, 2nd Floor, Courtroom I, Alexandria, VA. (Appearances: Stephen Wood/JP Morgan) (Cassidy-Miller, Terry) (Entered: 05/07/2009)
05/13/2009	35	Order Withdrawing Motion for Relief from Stay with JPMorgan Chase Bank, National Association (Related Doc # <u>26</u>) (Williams, Denise)
05/15/2009	36	BNC certificate of mailing of order (Re: related document(s) <u>35</u> Order on Motion for Relief from Stay) (Admin.) (Entered: 05/16/2009)
05/19/2009	37	Hearing continued (Re: related document(s) <u>28</u> Objection to Debtors Claim of Exemptions filed by Gordon P. Peyton) Hearing scheduled 6/2/2009 at 10:00 AM at Judge Mitchell's Courtroom, 200 South Washington Street, 2nd Floor, Courtroom I, Alexandria, VA. (Appearances: Elizabeth Lynch/Tr) (Cassidy-Miller, Terry)
05/20/2009	38	Hearing Cancelled - Removed/Order Withdrawing entered(Re: related document(s) <u>26</u> Motion for Relief from Stay filed by JPMorgan Chase Bank, National Association) (Lawson, Tawanna)
06/02/2009	39	Hearing held; sustained; Court will prepare Order (Re: related document(s) <u>28</u> Objection to Debtors Claim of Exemptions filed by Gordon P. Peyton) (Appearances: Gordon Peyton/Tr; Dan Press/Dbt) (Cassidy-Miller, Terry)
06/04/2009	40	Order Sustaining Objection to Exemptions (Re: related document (s) <u>28</u> Sustaining Objection to Debtors Claim of Exemptions filed by Gordon P. Peyton) (Williams, Denise)
06/04/2009	41	Notice of Appeal (Re: related document(s) <u>40</u> No action taken on Order Re: Objection) filed by Daniel M. Press of Chung & Press, P.C. on behalf of Kenneth Kun Lee. Appellant Designation due by 6/15/2009. (Press, Daniel)

06/04/2009	42	U.S. Treasury receipt of Notice of Appeal(09-10780-SSM) [appeal,97] (255.00) filing fee. Receipt number 9194858, amount \$ 255.00. (U.S. Treasury)
06/04/2009	43	Appellant Designation , Statement of Issues (Re: related document(s) 41 Notice of Appeal filed by Kenneth Kun Lee) filed by Daniel M. Press of Chung & Press, P.C. on behalf of Kenneth Kun Lee. Appellee Designation due by 6/15/2009. (Press, Daniel)
06/06/2009	44	BNC certificate of mailing of order (Re: related document(s) 40 No action taken on Order Re: Objection) (Admin.) (Entered: 06/07/2009)
06/09/2009	45	Discharge of Debtor (Williams, Denise)
06/11/2009	46	BNC Certificate of Mailing of Discharge of Debtor(s) (Re: related document(s) 45 Discharge of Chapter 7 Debtor(s)) (Admin.) (Entered: 06/12/2009)